

TERRITORIAL SEA AND CONTIGUOUS ZONE EXTENSION ACT OF 1988

OCTOBER 3, 1988.—Ordered to be printed

Mr. JONES of North Carolina, from the Committee on Merchant
Marine and Fisheries, submitted the following

REPORT

together with

DISSENTING VIEWS

[To accompany H.R. 5069 which on July 14, 1988, was referred jointly to the
Committees on Merchant Marine and Fisheries, Foreign Affairs and the Judiciary]

[Including cost estimate of the Congressional Budget Office]

The Committee on Merchant Marine and Fisheries, to whom was referred the bill (H.R. 5069) to establish a 12-mile territorial sea and a 24-mile contiguous zone, to establish the National Oceans Policy Commission, and for other purposes, having considered the same report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Territorial Sea and Contiguous Zone Extension Act of 1988".

SEC. 2. FINDINGS.

Congress finds that—

(1) the manner in which the oceans are used affects the national security, transportation needs, economy, food resources, energy and raw materials needs, international leadership, and quality of the environment of the United States;

(2) it is in the interest of the United States to have a 12-mile territorial sea and a 24-mile contiguous zone for purposes of protecting national security, enforcing United States laws on vessels operating off the coast of the United States, and conforming United States laws with principles of customary international law;

(3) to effectively accomplish such purposes it is necessary to establish an orderly framework and schedule for examining existing laws to determine whether changes need to be made in existing laws to effectively implement a 12-mile territorial sea and a 24-mile contiguous zone; and

(4) the possible extension of the legal rights and interests of the States and the authority of Federal agencies beyond the geographic limits in which such rights, interests, and authorities currently exist are issues which deserve careful and orderly consideration.

SEC. 3. PURPOSES.

The purposes of this Act are—

(1) for purposes of international law, foreign affairs, law enforcement, and national security—

(A) to extend the territorial sea of the United States to 12 nautical miles; and

(B) to extend the contiguous zone of the United States to 24 nautical miles; and

(2) to establish the National Oceans Policy Commission to conduct a comprehensive examination of existing policies and laws and propose to the Congress and the President a comprehensive oceans policy, including recommendations to effectively implement the extension of the territorial sea and contiguous zone.

TITLE I—EXTENSION OF TERRITORIAL SEA AND CONTIGUOUS ZONE

SEC. 101. EXTENSION OF TERRITORIAL SEA.

(a) **EXTENSION.**—The territorial sea of the United States consists of—

(1) the ocean waters adjacent to the baseline of the United States (as such baseline is established in accordance with international law) to a seaward extent that is a line, every point of which is located on the seaward side of such baseline at a distance of 12 nautical miles from the nearest point of the baseline;

(2) the seabed and subsoil located below such waters; and

(3) the airspace above such waters.

(b) **EFFECT.**—The sovereignty of the United States exists in accordance with international law over all areas that are part of the territorial sea of the United States.

(c) **AUTHORITY OF STATES TO MANAGE FISHERY RESOURCES.**—The extension of the territorial sea by this Act shall not affect the authority of States to manage fishery resources, as such authority existed prior to the extension.

SEC. 102. EXTENSION OF CONTIGUOUS ZONE.

(a) **EXTENSION.**—The contiguous zone of the United States consists of the zone of ocean waters contiguous to the territorial sea of the United States (as extended by this Act) and extending 24 nautical miles seaward from the baseline from which the seaward extent of the territorial sea is measured.

(b) **EFFECT.**—The United States has authority to conduct activities in the contiguous zone of the United States to the extent necessary—

(1) to prevent infringement of the customs, fiscal, immigration, and sanitary laws and regulations of the United States in the territory of the United States, including such infringement in the territorial sea of the United States; and

(2) to punish infringement of such laws and regulations committed in the territory of the United States, including such an infringement committed in the territorial sea of the United States.

(c) **CONFORMING AMENDMENT.**—Subsection (j) of section 401 of the Tariff Act of 1930 (19 U.S.C. 1401(j)) is amended by striking “within four leagues of the coast of the United States” and inserting “within 24 nautical miles of the baseline of the United States”.

SEC. 103. EFFECT ON OTHER LAWS.

(a) **DOMESTIC LAW.**—Except as provided in section 102(c) or in any law enacted after the date of the enactment of this Act, the legal rights, interests, jurisdiction, and authority of States, of the Commonwealth of Puerto Rico, of the Commonwealth of the Northern Mariana Islands, and of the territories and possessions of the United States are not extended by the extension of the territorial sea by section 101 or of the contiguous zone by section 102.

(b) **INTERNATIONAL LAW.**—Nothing in this Act shall impair—

- (1) the right of innocent passage through the territorial sea of the United States or the right of transit passage through international straits; or
- (2) the determination, in accordance with international law and equitable principles, of any maritime boundary with a foreign nation or foreign jurisdiction.

SEC. 104. EFFECTIVE DATE.

This title shall be effective March 10, 1989.

TITLE II—ESTABLISHMENT OF NATIONAL OCEANS POLICY COMMISSION

SECTION 201. SHORT TITLE.

This Title may be cited as the "National Oceans Policy Commission Act of 1988".

SEC. 202. FINDINGS.

The Congress finds that—

(1) the manner in which the oceans and the Great Lakes are used affects the national security, transportation needs, economy, food resources, energy and raw materials needs, international leadership, and the quality of the environment of the people of the United States;

(2) Presidential Proclamation 5030 of March 10, 1983, which established the Exclusive Economic Zone of the United States of America and proclaimed the sovereign rights of the United States over ocean resources out to 200 nautical miles from the coastline of the United States, requires the development and implementation of a comprehensive exploration and monitoring plan to adequately address the conservation and development of the zone;

(3) the work of the Commission on Marine Science, Engineering, and Resources (known as the "Stratton Commission") in the 1960's was instrumental in initially defining the structure of United States oceans policy, and led to the enactment of major ocean-related legislation and the establishment of key oceanic and atmospheric institutions;

(4) recent concern regarding expanding Federal expenditures has resulted in the retrenchment of many ocean initiatives of the 1970's and, as a result, the complexion of United States ocean programs has changed significantly; and

(5) with Federal fiscal resources expected to be severely limited at least to the end of the century, a reexamination of the Nation's oceans, Great Lakes, and atmospheric activities is needed, and a new coordinated and comprehensive national oceans policy, based on that reexamination, must be developed in order that wise use of the oceans and the Great Lakes can be implemented in a peaceful and balanced fashion.

SEC. 203. PURPOSE.

The purpose of this title is to establish a commission to propose to the Congress and the President a comprehensive oceans policy (and develop recommendations for the implementation of that policy) that will assist the Congress and the President in—

(1) developing domestic policies and laws to promote the wise use and conservation of marine resources, including Great Lakes resources;

(2) developing international policies and laws to promote the peaceful uses of the oceans and balance the interests of all nations;

(3) promoting United States leadership in marine scientific research, facilities, and technology;

(4) developing the role and capacity of the United States in the monitoring and prediction of global oceanic atmospheric processes; and

(5) appropriately allocating the responsibilities for marine and atmospheric research and marine resource understanding, conservation, management, and development among the various levels of government and the private sector and promoting the efficient use of limited fiscal resources for such activities.

SEC. 204. ESTABLISHMENT OF THE COMMISSION.

(a) **IN GENERAL.**—There is established a commission to be known as the National Oceans Policy Commission (hereinafter referred to in this Act as the "Commission").

(b) **NUMBER OF MEMBERS.**—The Commission shall consist of 17 members who shall be appointed by the President in accordance with the provisions of this section not later than March 10, 1989.

(c) **MEMBER QUALIFICATIONS.**—The membership of the Commission shall be composed in such a manner as to provide that 14 of the members shall be appointed from the following qualification categories:

(1) 3 members shall be from private sector nonprofit organizations involved with national oceans policy (including, but not limited to, those with consumer and environmental interests).

(2) 5 members shall be from private sector commercial organizations involved with national oceans policy (including, but not limited to, those with marine transportation and living and nonliving marine resource interests).

(3) 2 members shall be Governors, not of the same political party, of coastal states in different geographical regions.

(4) 2 members shall be specialists in marine science from the academic community.

(5) 2 members shall be selected from at large, at least one of whom shall be knowledgeable in international oceans policy.

(d) **NOMINEES FOR MEMBERSHIP.**—(1)(A) The Majority Leader of the Senate (hereinafter in this title referred to as the "Majority Leader") and the Speaker of the House of Representatives (hereinafter referred to in this title as the "Speaker"), in consultation with the Minority Leader of each House, respectively, shall each prepare a list of 14 nominees for appointment to the Commission.

(B) Each list of nominees prepared under subparagraph (A)—

(i) shall contain nominees that meet the qualifications set forth in subsection (c); but

(ii) may not contain any of the same nominees.

No more than half of the nominees on each list may be members of the same political party.

(C) The Majority Leader and the Speaker shall submit the lists prepared under subparagraph (A) to the President no later than February 10, 1989.

(D) The President shall appoint 7 members of the Commission from the list submitted by the Majority Leader and 7 members from the list submitted by the Speaker. No more than 7 members of the Commission appointed under this paragraph may be members of the same political party.

(2) The President shall make 3 appointments to the Commission in addition to those appointed under paragraph (1). Federal officers or employees or individuals employed in the private sector are eligible for appointment under this paragraph. No more than 2 of the individuals appointed under this paragraph may be members of the same political party.

(3) The President, the Majority Leader, and the Speaker shall jointly select a Chairman and Vice Chairman of the Commission from members appointed under paragraph (1)(D). The Vice Chairman shall act as Chairman in the absence of the Chairman.

(e) **VACANCIES.**—Except as may be required by electoral changes, members of the Commission shall be appointed to serve until the Commission terminates under section 212. In the event of a vacancy, a new member shall be appointed in the same manner in which the original appointment was made. In the case of the vacancy of a member appointed under subsection (d)(1)(D), the new member shall—

(1) be in the same qualification category under subsection (c) as the former member; and

(2) be appointed from a list of at least two nominees prepared by the Majority Leader or the Speaker, as appropriate.

(f) **MEETING OF COMMISSION.**—The Chairman or a majority of the members may call a meeting of the Commission.

SEC. 205. ADVISORS TO COMMISSION.

(a) **CONGRESSIONAL ADVISORS.**—(1) The Commission shall have 8 congressional advisors who shall advise the Commission in the formulation of findings and recommendations. Four of the advisors are Members of the Senate selected by the Majority Leader and 4 of the advisors are Members of the House of Representatives selected by the Speaker. Each congressional advisor must have knowledge appropriate to the concerns of the Commission.

(2) No more than 2 of the congressional advisors from each House may be members of the same political party.

(b) **MILITARY ADVISOR.**—The Chairman of the Joint Chiefs of Staff, or his designee, shall serve in an advisory capacity to the Commission.

SEC. 206. FUNCTIONS OF COMMISSION.

(a) PROPOSAL OF COMPREHENSIVE POLICY AND NEED FOR LEGISLATIVE CHANGES.—(1) The Commission shall propose to the President and to Congress a comprehensive national oceans policy to carry out the purpose of this Act.

(2) The Commission shall develop recommendations on the international and domestic ocean policies, laws, regulations, and activities of the United States that will define and implement—

(A) the 12-mile territorial sea and 24-mile contiguous zone established by title I; and

(B) the other aspects of the comprehensive policy proposed under paragraph (1).

(3) The recommendations developed under paragraph (2) shall—

(A) address domestic (including the Great Lakes) and international marine policy issues;

(B) an assessment of the need for modifications in existing United States policies, laws, regulations, and practices necessary to develop efficient long-range programs for—

(i) domestic implementation of the 12-mile territorial sea and 24-mile contiguous zone established by title I;

(ii) research in marine and atmospheric sciences;

(iii) the understanding, conservation, management, and development of marine resources, including Great Lakes resources; and

(iv) the protection of the ocean environment;

(C) address the most appropriate allocation of responsibilities for research in marine and atmospheric sciences and for the understanding, conservation, management, and development of marine resources among Federal agencies, State and local government, and the private sector; and

(D) consider any other aspects of United States related policies, laws, regulations, and practices considered necessary by the Commission in carrying out its duties pursuant to this subsection.

(b) DEVELOPMENT OF RECOMMENDATIONS.—In developing recommendations under subsection (a), the Commission shall—

(1) review existing laws for the purpose of assessing the need for legislation to amend those laws to effectively implement the 12-mile territorial sea and 24-mile contiguous zone established by title I;

(2) survey and review all existing and planned ocean-related activities of Federal agencies, including those relating to navigation, marine research, national security, and the conservation, management, and development of marine resources, and the protection of the marine environment;

(3) survey and review all existing and planned marine facilities and equipment, including surface ships, undersea research vehicles and habitats, computers, oceanographic satellites, and other appropriate research tools;

(4) evaluate the relationships among Federal agencies, State and local government and the private sector for planning and carrying out the activities described in this subsection, considering areas of substantial coincidence of interest and responsibilities among the various levels of government, academia, industry, and the public interest community and other users of the marine environment, in order to enhance the efficient use of marine resources;

(5) consider Presidential Proclamation 5030 of March 10, 1983, on the Exclusive Economic Zone of the United States of America, including an examination of opportunities and the need for economic development within the exclusive economic zone which have a major impact on the coastal zone of the States and the adequacy of present laws to manage such development in such a way as to minimize conflict;

(6) consider the relationships of United States policies to the Convention of the Law of the Sea and actions available to the United States to affect peaceful collaborations between the United States and other nations, including the development of cooperative international marine programs which will facilitate opportunities for United States and foreign scientists to work together in the waters of the cooperating nations and to provide for the development of such programs in the United States; and

(7) engage in any other preparatory work deemed necessary to carry out the duties of the Commission pursuant to this section.

SEC. 207. POWERS OF THE COMMISSION.

(a) OBTAINING INFORMATION.—The Commission may secure directly from any department or agency of the United States any information it considers necessary to

carry out its functions under this Act. Each department or agency shall cooperate with the Commission and, to the extent permitted by law, furnish information to the Commission upon request of the Chairman.

(b) **USE OF MAILS.**—The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States.

(c) **ADMINISTRATIVE SUPPORT.**—The General Services Administration shall provide to the Commission on a reimbursable basis the administrative support services that the Commission may request.

(d) **CONTRACTUAL AUTHORITY.**—The Commission may enter into contracts with Federal and State agencies, private firms, institutions, and individuals to assist the Commission in carrying out its duties. The Commission may purchase and contract without regard to sections 303 of the Federal Property and Administration Services Act of 1949 (41 U.S.C. 253), section 18 of the Office of Federal Procurement Policy Act (41 U.S.C. 416), and section 8 of the Small Business Act (15 U.S.C. 637), pertaining to competition and publication requirements, and may arrange for printing without regard to the provisions of title 44, United States Code. The contracting authority of the Commission under this Act is effective only to the extent that appropriations are available for contracting purposes.

SEC. 208. ADMINISTRATIVE PROVISIONS.

(a) **DETAIL OF PERSONNEL.**—Upon request of the Commission, the head of any Federal agency shall detail any of the personnel of the agency to the Commission to assist the Commission in carrying out its functions under this Act. To the extent feasible, such detail shall be on a reimbursable basis.

(b) **VOLUNTEER SERVICES.**—The Commission may accept and use the services of volunteers serving without compensation, and to reimburse volunteers for travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code. Except for the purposes of chapter 81 of title 5, United States Code, relating to compensation for work injuries, and chapter 171 of title 28, United States Code, relating to tort claims, a volunteer under this subsection may not be considered to be an employee of the United States for any purpose.

(c) **CONSULTANTS.**—To the extent that funds are available, and subject to the rules that may be prescribed by the Commission, the Director appointed under section 9(a) may procure the temporary and intermittent services of experts and consultants under section 3109(b) of title 5, United States Code, but at rates not to exceed the rate of pay for GS-18 of the General Schedule.

(d) **CONDUCT OF MEETINGS.**—(1) All meetings of the Commission shall be open to the public, except when the Chairman or a majority of the members of the Commission determine that the meeting or any portion of it may be closed to the public. Interested persons shall be permitted to appear at open meetings and present oral or written statements on the subject matter of the meeting. The Commission may administer oaths or affirmations to any person appearing before it.

(2) All open meetings of the Commission shall be preceded by timely public notice in the Federal Register of the time, place, and subject of the meeting.

(3) Minutes of each meeting shall be kept and shall contain a record of the people present, a description of the discussion that occurred, and copies of all statements filed. Subject to section 552 of title 5, United States Code, the minutes and records of all meetings and other documents that were made available to or prepared for the Commission shall be available for public inspection and copying at a single location in the offices of the Commission.

(4) The Federal Advisory Committee Act (5 U.S.C. App. 1-15) does not apply to the Commission.

SEC. 209. DIRECTOR AND STAFF OF COMMISSION.

(a) **DIRECTOR.**—The Commission shall have a Director who shall be appointed by the Chairman and who shall be paid at a rate not to exceed the rate of basic pay for GS-18 of the General Schedule. The Director shall be knowledgeable in administrative management and oceans policy.

(b) **STAFF.**—Subject to such rules as may be prescribed by the Commission, the Director may hire staff for the Commission and shall fix appropriate compensation. The hiring and compensation of the Director and staff under this section may occur without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates.

SEC. 210. COMPENSATION OF MEMBERS.

(a) **IN GENERAL.**—Except as provided in subsection (b), members of the Commission shall be paid at a rate not to exceed the basic pay for a GS-18 of the General Schedule for each day, including traveltime, during which such members are engaged in the actual performance of the Commission duties.

(b) **EXCEPTION.**—A member of the Commission who is an officer or employee of the United States may not receive pay for service on the Commission, but shall be reimbursed from funds authorized by this Act for travel expenses, including per diem in lieu of subsistence as may be authorized by law for persons in Government service employed intermittently.

SEC. 211. COMMISSION REPORT.

No later than 2 years after the Commission first meets, the Commission shall submit simultaneously to the President and to each House of Congress a detailed final report regarding the comprehensive oceans policy and the recommendations required to be developed under section 206.

SEC. 212. TERMINATION OF COMMISSION.

The Commission shall cease to exist 30 days after the date of the submission of the final report under section 207.

SEC. 213. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated not more than \$2,000,000 to carry out this title, to remain available until expended.

SUMMARY OF BILL

H.R. 5069 extends the territorial sea of the United States from 3 to 12 nautical miles and extends the contiguous zone of the United States from 12 to 24 nautical miles. The bill also establishes a National Oceans Policy Commission to conduct an examination of existing ocean and Great Lakes laws and policies and develop recommendations for a comprehensive oceans policy, including possible changes in existing law and policy to implement the extensions of the territorial sea and contiguous zone.

H.R. 5069 provides that, except as may be enacted in subsequent legislation, the rights and interests of the states and U.S. territories and possessions are not extended by the extension of the territorial sea and contiguous zone. Further, the bill provides that the authority of states to manage fishery resources is not affected by the extension of the territorial sea. Finally, the bill extends U.S. customs waters from four league (or 12 miles) to 24 nautical miles.

PURPOSE OF LEGISLATION

The purposes of H.R. 5069 are to extend the territorial sea and contiguous zone of the United States to protect national security, enforce United States customs laws on vessels operating off the coast of the United States, and conform United States practice with international law principles; to establish a National Oceans Policy Commission to make recommendations to the Congress and the President on policies and laws pertaining to U.S. oceans policy; to maintain the status quo with respect to the operation of domestic law unless Congress enacts subsequent legislation; and to confirm that the extension of the territorial sea does not alter the jurisdiction of states over fishery resources within three miles.

BACKGROUND AND NEED FOR LEGISLATION

The United States currently has a 3-mile territorial sea and a 12-mile contiguous zone. The United States has had a 3-mile territori-

al sea since 1793 when then Secretary of State Thomas Jefferson first asserted a 3-mile protection zone around the United States. Since that time, evolving principles of customary international law, including the provisions of the Law of the Sea Convention, recognize that a nation may claim a 12-mile territorial sea and a 24-mile contiguous zone.

The Secretary of Defense has recently recommended that the United States extend its territorial sea for national security reasons. Within the territorial sea, a nation can exercise virtually all of the attributes of sovereignty that it asserts over its land territory, subject only to the right of passage for foreign vessels. The passage of foreign vessels must be innocent, however, and it is not innocent if it is prejudicial to the peace, good order, or security of the coastal nation. Within the territorial sea, for example, foreign vessels may not collect intelligence, and foreign submarines must navigate on the surface and show their flag. Therefore, extending the territorial sea from 3 to 12 nautical miles would enhance the ability of the United States to protect its national security interests.

Complementary to an expanded territorial sea is an expanded contiguous zone. Within its contiguous zone, a nation may apply its customs, fiscal, immigration, and sanitary laws and regulations. A coastal nation can stop a foreign ship in the contiguous zone for the purpose of investigation or arrest in connection with a potential violation of any of these laws and regulations. Extending the contiguous zone an additional 12 nautical miles could therefore enable the United States to apply its drug interdiction laws to foreign vessels. To ensure that the United States Coast Guard has the requisite authority to apply these laws fully in an extended contiguous zone, H.R. 5069 changes the definition of U.S. customs waters in the Tariff Act of 1930 (19 U.S.C. 1401(j)) to parallel the extended contiguous zone.

The Executive Branch is considering whether to extend the territorial sea and contiguous zone by means of a Presidential proclamation. The Justice Department is currently analyzing the question of the President's authority to issue a proclamation that would apply solely for international purposes, but would not have the effect of modifying domestic law. The Committee believes that the President, exercising his Commander-in-Chief and foreign affairs powers, probably does have the constitutional authority to extend the territorial sea and contiguous zone by proclamation for foreign policy reasons. The Committee also believes the President has no authority to change domestic law with such a proclamation. Despite the Committee view, there may be uncertainty with respect to interpretations of existing domestic law.

The best way to resolve this uncertainty is through the passage of legislation establishing the precise effect of an extension of the territorial sea and contiguous zone on U.S. domestic law. This is one of the central purposes for enacting H.R. 5069. H.R. 5069 also implicitly acknowledges the role Congress has under the Commerce Clause and Property Clause of the Constitution in the acquisition, disposition and management of property belonging to the United States.

The Committee also believes that the best way to examine whether the extension of the U.S. territorial sea warrants further changes in domestic laws is through the establishment of a policy review commission. For this reason, title II of H.R. 5069 authorizes the establishment of a National Oceans Policy Commission. The 17-member, bipartisan Committee is virtually identical to that established in H.R. 1171 (Rept. 100-300, Part I) which was passed by the House on September 29, 1987. The Committee is given the mandate to conduct a comprehensive examination of U.S. oceans policy and laws, including the Great Lakes and to develop, within two years, a report to the President and Congress of its policy recommendations. One of the principal recommendations would be the implementation of the extended territorial sea and contiguous zone.

Until the Committee issues its report and unless Congress enacts subsequent legislation, H.R. 5069 provides that the extension of the territorial sea and contiguous zone does not affect the rights, interests, and authority of states and U.S. territories and possessions. Although the bill speaks of State rights under Federal law, the Committee recognizes that the effect of the Act is that all Federal laws will remain unchanged except as specifically extended. The Committee also confirms its view that the allocation of state and federal responsibility under the Magnuson Fishery Conservation and Management Act (MFCMA) (16 U.S.C. 1801 *et seq.*) is working well and should be left unchanged by an extension of the U.S. territorial sea. Because of the recent changes to the MFCMA in 1977, H.R. 5069 explicitly so provides.

COMMITTEE ACTION

Mr. Lowry of Washington introduced H.R. 5069 on July 14, 1988. The bill was referred to the Committees on Merchant Marine and Fisheries, Foreign Affairs, and the Judiciary. Within the Merchant Marine and Fisheries Committee, the bill was referred initially to the Oceanography Subcommittee and sequentially to the Fisheries and Wildlife Conservation and the Environment Subcommittee.

On August 10, 1988, the Oceanography Subcommittee held a hearing to take testimony from Administration witnesses and the public on H.R. 5069. Subsequently, on September 7, 1988, the Oceanography Subcommittee met to mark up the bill. At the markup, Mr. Lowry offered a substitute to H.R. 5069 as introduced which the Subcommittee ordered reported to the full Committee.

On September 15, 1988, after the Fisheries and Wildlife Subcommittee agreed to be discharged from further consideration of the bill, the full Merchant Marine and Fisheries Committee took up consideration of the Lowry substitute to H.R. 5069. The full Committee adopted the Lowry substitute after agreeing to an amendment offered by Chairman Jones replacing the Territorial Sea Commission in the Lowry substitute with the National Oceans Policy Commission. The bill, as amended, was ordered reported to the House by voice vote.

SECTION-BY-SECTION ANALYSIS

TITLE I—TERRITORIAL SEA AND CONTIGUOUS ZONE EXTENSION ACT OF 1988

Section 1. Section 1 contains the short title to title I of the bill.

Section 2. Section 2 contains Congressional findings on the need to extend the U.S. territorial sea and contiguous zone and the need to establish an orderly framework and schedule for examining existing laws to determine whether changes are necessary.

Section 3. Section 3 states that the purposes of H.R. 5069 are to extend the territorial sea and contiguous zone of the United States for international law, foreign affairs, law enforcement and national security purposes, and to establish a commission to conduct a comprehensive examination of existing ocean laws and policies.

Section 101. Section 101 provides for the extension of the territorial sea of the United States. Subsection (a) extends the territorial sea to a distance of 12 nautical miles from the baseline of the United States as established in accordance with international law. The territorial sea is to consist of the ocean waters adjacent to the baseline, the seabed and subsoil located below such waters, and the airspace above such waters.

Subsection (b) declares that the sovereignty of the United States exists in accordance with international law principles over all areas that are part of the territorial sea.

Subsection (c) provides that the extension of the U.S. territorial sea does not affect the authority of states to manage fishery resources as that authority existed prior to the extension. The Committee's specific intent is to leave unaffected the existing state-federal responsibility for fishery management as provided by the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*). The Committee believes that the relatively recent enactment of this Act in 1977 settled the state-federal relationship for fisheries management purposes by creating regional fishery management councils and, therefore, it is not necessary for the Commission created under this Act to reopen the issue of whether state authority over fishery management should be extended.

Section 102. Section 102 extends the contiguous zone of the United States. Subsection (a) extends the contiguous zone to a distance 24 nautical miles seaward from the baseline from which the U.S. territorial sea is measured.

Subsection (b) recognizes, in accordance with international law, that the United States may within its contiguous zone prevent violations of its customs, fiscal, immigration, and sanitary laws and regulations, including any such violation in the territorial sea.

Subsection (c) makes a conforming amendment to the Tariff Act of 1930 (19 U.S.C. 1401(j)) by extending the definition of "customs waters" to 24 nautical miles. This will provide the U.S. Coast Guard with the necessary authority to enforce U.S. drug laws within the extended contiguous zone.

Section 103. Section 103 determines the effect of the territorial sea and contiguous zone extensions on certain rights and obligations granted under domestic and international law. Subsection (a) establishes that, except as may be provided in subsequent legisla-

tion, the legal rights, interests, jurisdiction, and authority of the states and of the territories and possessions of the United States shall not be altered by the extension of the territorial sea and contiguous zone made by this Act. This section also covers the authority of the federal government to the extent that it affects the legal rights, interests and authority of the states.

Subsection (b) states explicitly that the United States will act in accordance with international law in its extended territorial sea and contiguous zone. In the territorial sea, the U.S. will recognize the right of innocent passage and the right of transit passage through international straits. The United States also will continue to determine its maritime boundaries with foreign nations in accordance with international law and equitable principles.

Section 104. This section states that title I will be effective March 10, 1989, the sixth anniversary of the establishment of the United States' Exclusive Economic Zone. This is intended to provide the President sufficient time to establish the National Oceans Policy Commission under title II.

TITLE II—NATIONAL OCEANS POLICY COMMISSION ACT OF 1988

Title II incorporates, with a few changes, the provisions of H.R. 1171, the National Oceans Policy Commission Act of 1987, as reported by the Committee on September 17, 1987, (Rept. 100-300, Part 1) and passed by the House on September 29, 1987. Unless otherwise modified below, the Committee incorporates by reference its report on H.R. 1171.

Section 204(d)(1)(C) of H.R. 5069 requires the Majority Leader and the Speaker to submit their respective lists of nominees for membership on the Commission to the President no later than February 10, 1989. This change will enable the President to appoint the members of the Commission by the date on which the territorial sea and contiguous zone extensions are to be effective, i.e., March 10, 1989.

Section 206 of H.R. 5069 expands the role of the Commission to take into account the territorial extensions provided by title I of the bill. As part of the comprehensive oceans policy, the Commission is to include an assessment of the need for any modifications in existing U.S. laws, policies, and regulations as a result of the extended territorial sea and contiguous zone. To develop its recommendations, the Commission is directed to review existing laws that may be affected by these extensions. The Committee does not intend by this direction to presume that further modifications in domestic law are required, but only that the Commission should examine this question and make its recommendations on this issue as part of its recommended comprehensive oceans policy (including the Great Lakes).

INFLATIONARY IMPACT STATEMENT

Pursuant to the requirements of clause 2(l)(4) of Rule XI of the Rules of the House of Representatives, the Committee estimates that the enactment of H.R. 5069 will have no significant inflationary impact upon prices and costs in the operation of the national economy.

COST OF THE LEGISLATION

Clause 7(a) of Rule XIII of the Rules of the House of Representatives requires a statement of the estimated cost to the United States which would be incurred in carrying out H.R. 5069. However, under paragraph (d) of Clause 7, the provisions of (a) do not apply when the Committee has received a timely report from the Congressional Budget Office.

COMPLIANCE WITH HOUSE RULE XI

1. With respect to the requirements of clause 2(1)(3)(A) of Rule XI of the Rules of the House of Representatives, no oversight findings or recommendations on the subject of H.R. 5069 have been made by the Committee during the 100th Congress.

2. With respect to the requirements of clause 2(1)(3)(B) of Rule XI of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, H.R. 5069 does not contain any new budget authority or tax exemptions.

3. With respect to the requirements of clause 2(1)(3)(D) of Rule XI of the Rules of the House of Representatives, the Committee has received no report from the Committee on Government Operations on the subject of H.R. 5069.

4. With respect to the requirements of clause 2(1)(3)(C) of Rule XI of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following estimate of the cost of H.R. 5069 from the Director of the Congressional Budget office.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 23, 1988.

Hon. WALTER B. JONES,
*Chairman, Committee on Merchant Marine and Fisheries, U.S.
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the attached cost estimate for H.R. 5069, the Territorial Sea and Contiguous Zone Extension Act of 1988.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

JAMES L. BLUM,
Acting Director.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: H.R. 5069.
2. Bill title: The Territorial Sea and Contiguous Zone Extension Act of 1988.
3. Bill status: As ordered reported by the House Committee on Merchant Marine and Fisheries, September 15, 1988.
4. Bill purpose: H.R. 5069 would extend the territorial sea of the United States to 12 nautical miles and would extend the contiguous zone of the United States to 24 nautical miles. The bill would also establish the National Oceans Policy Commission, and would authorize appropriations of \$2 million for the commission. The com-

mission would be required to submit a report to the Congress and the President within two years after its first meeting.

5. Estimated cost to the Federal Government:

[By fiscal year, in millions of dollars]

	1989	1990	1991	1992	1993
Authorization level.....	2.0				
Estimated outlays.....	0.9	1.0	0.1		

The costs of this bill would be in budget function 300.

Basis of estimate: This estimate assumes the full amount authorized would be appropriated for fiscal year 1989. The estimated outlays are based on spending patterns for similar commissions. Based on information provided by the U.S. Coast Guard, CBO estimates that extending the territorial sea and the contiguous zone would not have a significant effect on the federal budget.

6. Estimated cost to State and local governments: None.

7. Estimate comparison: None.

8. Previous CBO estimate: None.

9. Estimate prepared by: Michael Sieverts.

10. Estimate approved by: C.G. Nuckols (for James L. Blum, Assistant Director for Budget Analysis).

DEPARTMENTAL REPORTS

The following reports were received from Interior and Defense Departments:

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, DC, September 15, 1988.

Hon. WALTER B. JONES,
Chairman, Committee on Merchant Marine and Fisheries,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: We understand that the House Committee on Merchant Marine and Fisheries will mark up H.R. 5069, the "Territorial Sea and Contiguous Zone Extension Act of 1988" on September 15. The Department of the Interior along with other Federal agencies recently testified before the Oceanography Subcommittee regarding this legislation. While the Department supported the concept of the extension of the territorial sea, we opposed Title II, the National Oceans Policy Commission. We are aware that the Subcommittee on Oceanography has amended H.R. 5069 to establish a Territorial Sea Commission instead. However, we are still strongly opposed to Title II and would recommend that the President veto H.R. 5069 unless this title is deleted.

There is no need to establish a new Commission to determine the impact of the extension of the territorial sea on existing law. Title I specifically states that the purpose for this extension is to protect national security, enforce U.S. laws on vessels operating off our coast and conform U.S. law with evolving principles of international law. Why then do we need a Commission empowered to develop proposed legislation relating to domestic ocean policies? This bill

should either list the laws related to national security and vessel regulation in section 102(c) or request the Departments of Defense, State and Transportation to review their national security and vessel regulation programs and provide recommended changes.

We are strongly opposed to using this national security measure to justify an unrelated and unnecessary reexamination of our domestic oceans policy. Existing statutes provide us with an effective and comprehensive policy which, for the most part, has stood the test of time and serves the nation well.

In addition, as a technical matter, we believe that Title I of the bill must be amended or report language must be included to ensure that domestic offshore activities are not affected by this legislation.

Time has not permitted the review and coordination of this report with other concerned agencies and our views represent this Department's position.

Sincerely,

J. STEVEN GRILES,
Assistant Secretary—Land and Minerals Management.

GENERAL COUNSEL OF THE,
DEPARTMENT OF DEFENSE
Washington, DC, September 15, 1988.

The Honorable WALTER B. JONES,
Chairman, Committee on Merchant Marine and Fisheries, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: This is in response to your request for the views of the Department of Defense on H.R. 5069, 100th Congress, as reported by the Oceanography Subcommittee on 7 September 1988, a bill "To establish a 12-mile territorial sea and a 24-mile contiguous zone, the establish the National Oceans Policy Commission, and for other purposes."

Title I of H.R. 5069 would extend the United States territorial sea from 3 to 13 miles and the contiguous zone from 12 to 24 miles. Title II would establish a Territorial Sea Commission, which would propose to the President and Congress a comprehensive policy to carry out the bill.

The Department of Defense opposes H.R. 5069. Historically, the Executive branch has asserted United States territorial and maritime claims to the international community. The United States claim to a territorial sea of three nautical miles was first made in 1793 by Secretary of State Thomas Jefferson. More recently, United States jurisdiction to exploit mineral resources of the continental shelf was asserted in 1945 by proclamation of President Truman, and jurisdiction over the maritime exclusive economic zone was asserted in 1983 by proclamation of President Reagan.

The Department of Defense recognizes that the interplay between a Presidential Proclamation and existing laws would be clarified by legislative action to affirm that the application of existing domestic laws will remain unchanged by such a proclamation and that only further action will change them. The Department of

Defense looks forward to working with Congress in such a coordinated endeavor.

The Department also opposes Title II of H.R. 5069. The Commission that it would establish is unnecessary; its work would duplicate that of existing entities such as the Interagency Group on Ocean Policy and the law of the Sea.

If Congress is to act in this matter notwithstanding the foregoing comments, such bill should be enacted subsequent to Presidential action. In light of this and in order to correct technical matters and inconsistencies with international law that would result from enactment of the current legislation, the following changes to H.R. 5069 (as reported by the Oceanography Subcommittee on 7 September 1988) are recommended.

1. Throughout the bill, reference to miles should be expressed in nautical miles (nm).

2. At *Section 2, para. (2)*, delete the words "and conforming United States laws with evolving principles of customary international law." *Reason*: This language is unnecessary. The concept of the 12 nm territorial sea and 24 nm contiguous zone is well established in customary international law as reflected in the 1982 U.N. Convention on the Law of the Sea (1982 Convention).

3. At *Section 2, para. (3), line 5*, add the words "for international purposes" after the word "implement." *Reason*: Clarity. This underscores the limited application of the extensions.

4. At *Section 2, para. (4), line 11*, delete the words "orderly" and substitute the word "separate." *Reason*: Clarifies that domestic legal implications of the extensions will occur subsequent to and separate from this legislation.

5. At *Section 3, para. (1), line 14*, delete the word "establish" and substitute the word "affirm." *Reason*: This bill should be enacted (or become effective) subsequent to Presidential action extending the territorial sea and contiguous zone. Its language should be limited to affirming the Executive action.

6. Delete *Section 3, para. (2)*, in its entirety. *Reason*: The Department objects to the establishment of the Commission. There are adequate mechanisms within the government to consider properly the domestic applications of a territorial sea and contiguous zone.

7. *Title 1*. Retitle as "EXTENSION OF THE TERRITORIAL SEA AND CONTIGUOUS ZONE." *Reason*: Clarity and accuracy. This is consistent with the limited purposes of the bill discussed above.

8. *Title I, section 101*. Retitle as "EXTENSION OF THE TERRITORIAL SEA." *Reason*: Same as paragraph 7, above.

9. *Title I, subsection 101(a)*. Retitle as "EXTENSION.—" delete the prefatory language at lines 1 and 2, and substitute the following: "The territorial sea of the United States shall consist of—". *Reason*: Clarity. This makes explicit the conforming nature of the bill to Executive action; it also implicitly recognizes that there is already a territorial sea.

10. At *title I, subsection 101(a), line 6*, delete the words "consisting of," add the word "of" after the word "point;" at *line 8* delete the word "to," substitute the word "from." *Reason*: Clarity.

11. At *title I, subsection 101(b), line 13*, delete the words "Subject to subsection (c);" at *line 14*, after the word "States," add the words "for purpose of international relations." *Reason*: Clarity.

12. Delete *title I, subsection 101(c)*; substitute the following: "Nothing in this Act shall affect the right of innocent passage in the territorial sea or transit passage in international straits overlapped by the territorial sea of the United States." *Reason*: The fishery-related language is inappropriate in the context of this legislation; substitute language makes clear that the U.S. conforms its jurisdiction in the territorial sea to international law.

13. *Title I, section 102*. Retitle as "EXTENSION OF THE CONTIGUOUS ZONE." *Reason*: Same as paragraph 7, above.

14. *Title I, subsection 102(a)*. The subsection should be entitled "EXTENSION—"; the prefatory language at lines 22 and 23 should read: "The contiguous zone of the United States shall consist of waters" *Reason*: Same as paragraph 9, above (differing only in reference to the contiguous zone rather than territorial sea).

15. At *title I, subsection 102(a), lines 1 and 2*, delete the word "of" to the end of the sentence: substitute the following: "from which the breadth of the territorial sea is measured." *Reason*: Clarity.

16. At *title I, subsection 102(b)(2), line 11*, after the word "laws," add the words "and regulations." *Reason*: To conform our jurisdiction in the contiguous zone to international law, which allows for enforcement of regulations.

17. *Title I, subsection 103(a), line 2*, after the word "States," re-draft as follows: "shall not be extended beyond the previous geographic limits by the" *Reason*: Clarity.

18. *Title I, subsection 103(b)*, delete in its entirety. *Reason*: This subsection is unnecessary.

19. *Title II*, delete in its entirety. *Reason*: The Department objects to the establishment of the Commission for the reasons set forth above.

Sincerely,

KATHLEEN A. BUCK.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman)

SECTION 401 OF THE TARIFF ACT OF 1930

TITLE IV—ADMINISTRATIVE PROVISIONS

Part I—Definitions

SEC. 401. MISCELLANEOUS.

When used in this title or in Part I of Title III—

(a) * * *

* * * * *

(j) CUSTOMS WATERS—The term "customs waters" means, in the case of a foreign vessel subject to a treaty or other arrangement between a foreign government and the United States enabling or permitting the authorities of the United States to board, examine,

search, seize, or otherwise to enforce upon such vessel upon the high seas the laws of the United States, the waters within such distance of the coast of the United States as the said authorities are or may be so enabled or permitted by such treaty or arrangement and, in the case of every other vessel, the waters [within four leagues of the coast of the United States] *within 24 nautical miles of the baseline of the United States.*

* * * * *

DISSENTING VIEWS BY HON. NORMAN D. SHUMWAY, HON.
JACK FIELDS, AND HON. WALLY HERGER

We are disappointed that the Committee has reported this bill at this time. It seems we are making a mad rush to enact legislation just to beat the Administration to the punch, and to preempt the President from extending the territorial sea and contiguous zone by Proclamation.

And the Committee has made this mad rush despite the fact that we don't yet have all of the information we need to make an informed judgment on the legal ramifications of this proposal. We are still awaiting the Justice Department's Office of Legal Counsel's opinion on the constitutionally proper way to handle this matter.

There have been some who have implied that, secretly, the Administration and the State Department, specifically, want this territorial sea extension legislatively and thus are warming up to this bill. This is simply untrue. The Administration testimony at our subcommittee hearing specifically stated their opposition. And a more recent letter from the Department of Defense's General Counsel restates this opposition, as does a letter from the Interior Department's Assistant Secretary for Land and Minerals Management.

What the Administration has said is that there is a proper role for the Congress in this matter. However, the Congress should act in concert with the President either simultaneously with, or subsequent to, a Presidential Proclamation. From Thomas Jefferson, who as Secretary of State proclaimed the first territorial sea for the U.S., to President Truman, who proclaimed U.S. jurisdiction over the continental Shelf, to President Reagan, who proclaimed U.S. control over the 200-mile Exclusive Economic Zone, the Executive Branch has historically exercised its Constitutional prerogatives in these matters.

One of the arguments for this bill has been that without it there may be confusion over a state's authority should the territorial sea be extended by Presidential Proclamation and not legislation. Again, if there is a question about this, why don't we wait to hear from the Justice Department. Frankly, we're convinced that the Courts have been clear on this issue. In 1960 the Supreme Court in *United States v. Louisiana*, 80 S.Ct. 961, 982, specifically held that only the Congress, not the Executive, has the power to establish state boundaries, and that seaward state boundaries and the current 3-mile territorial sea are not coextensive. Thus, a Presidential Proclamation, pursuant to the President's foreign affairs power, would extend the territorial sea *for international purposes only*—not for any domestic laws such as the Submerged Lands Act, the Coastal Zone Management Act, or the Outer Continental Shelf Lands Act.

And, finally, there is also the issue of the National Oceans Policy Commission. While the Committee is clearly on record in favor of a National Oceans Policy Commission, that is not a sufficient reason to support it in this context.

The version of the Commission now in the bill is different than previous versions we have considered. It now contains provisions specifically directing the Commission to review and make recommendations on the need to change domestic laws to reflect the new 12-mile territorial sea and the 24-mile contiguous zone. We are convinced that this is a bad idea.

And, if it is a good idea, why doesn't it apply to fisheries laws? For some inexplicable reason this bill says there shouldn't be a change in fisheries laws with regard to state jurisdiction, but all the rest of the natural resource laws should be reviewed for changes.

Simply stated, the Commission in this context is a bad idea because there is absolutely no connection between the national security reasons to extend our international boundary from 3 to 12 miles and a proposal to give coastal states 9 more miles of submerged lands or greater power to control OCS leasing out to 12 miles. And the environmental community and the Coastal States Organization shouldn't use this national security action as an excuse to increase these state powers. The Interior Department agrees with this position and in his letter to the Committee, the Assistant Secretary stated the Department would recommend a veto if this Commission language remains in the bill.

We believe that proper action is to wait for the Justice Department's legal opinion and then work with the Administration to craft legislation which will coincide with, and complement, a Presidential Proclamation, and which the President will support. Historically, this is the way these matters have always been handled, and we believe this is the way the Constitution provides they should be handled.

NORMAN D. SHUMWAY.
JACK FIELDS.
WALLY HERGER.

